RECENT CASES

ADVERSE POSSESSION — CONTINUITY — ADVERSE POSSESSION IN CONTEMPT OF COURT. — In an action of trespass to try title plaintiff recovered judgment, and defendant was perpetually enjoined from trespassing on the land in question. Defendant continued to occupy the land for the period required by the Statute of Limitations. Plaintiff again brings an action of trespass to try title. *Held*, that title was acquired by adverse possession. *Ludtke* v. *Smith*, 186 S. W. 266 (Texas).

The case is more unique than difficult. It is well settled that the recovery of a judgment in ejectment, defendant remaining in possession, will not interrupt the running of the statute. *Smith* v. *Trabue*, 1 McLean 87, Fed. Cas. No. 13116; *Jackson* v. *Haviland*, 13 Johns. (N. Y.) 229; *Smith* v. *Hornback*, 14 Ky. 232; *Mabury* v. *Dollarhide*, 98 Mo. 198, 11 S. W. 611. In one case where a decree ordering a conveyance had by statute itself the operation of a conveyance, an opposite result was reached. *Gower* v. *Quinlan*, 40 Mich. 572. But clearly an injunction, directed simply at the defendant personally, can have no effect on his relation to the land, which is the only thing the Statute of Limitations is concerned with.

APPEAL AND ERROR — NOMINAL DAMAGES — REFUSAL TO REVERSE. — The plaintiff sued for a libel actionable *per se* according to a statutory definition, alleging no special damage. The trial court sustained the defendant's demurrer to the declaration. The libel was of such a nature that no punitive damages were involved. *Held*, that, although the trial court erred in sustaining the demurrer, judgment be affirmed since only nominal damages are involved. *Jones* v. *Register & Leader Co.*, 158 N. W. 571 (Iowa).

It is a well-established rule that the upper court will not reverse an erroneous judgment in order to allow nominal damages. *Harwood* v. *Lee*, 85 Iowa 622, 52 N. W. 521; *Kelly* v. *Fahrney*, 97 Fed. 176; *East Moline Co.* v. *Weir Plow Co.*, 95 Fed. 250. But the dependence of costs upon a reversal makes an affirmance unjust. Moreover, there is a general exception to the stated rule if substantial rights are involved. *Lewis* v. *Flint, etc. Ry. Co.*, 153 Mich. 638, 23 N. W. 469. See *Heater* v. *Pearce*, 59 Neb. 583, 587, 81 N. W. 615, 616. It has been so held, for example, in actions for trespass to determine title. *Wing* v. *Seske*, 109 N. W. 717 (Iowa); *Harriss* v. *Sneeden*, 104 N. C. 369, 10 S. E. 477. A similar decision was rendered in an action which, by establishing rights concerning a continuing nuisance, created an adjudication binding for any later case which might arise. *Harvey* v. *Mason City, etc. R. Co.*, 129 Iowa 465, 105 N. W. 958. In the principal case a substantial right might well be found in the interest of the plaintiff to have his reputation cleared by some sort of a decision in his favor. Nor would it be necessary to reverse judgment and remand the cause in order to protect the plaintiff. There is plenty of authority allowing the appellate court to render a final judgment itself. *Roberts* v. *Corbin & Co.*, 28 Iowa 355; *Yeoman* v. *Lasley*, 40 Ohio St. 339. See *Bernhardt* v. *Brown*, 118 N. C. 700, 24 S. E. 715. And such procedure is not prevented by the Iowa code. See 1897 IOWA CODE, § 4139.

BROKERS — WRONGFUL SALE OF STOCK — RIGHT OF CUSTOMER TO SIMILAR STOCK NOT ACQUIRED FOR THE PURPOSE OF RESTITUTION. — A stockbroker purchased on credit for the plaintiff 100 shares, and at different times for other customers 180 shares, of a certain stock. He subsequently disposed of all stock of this kind. Later he acquired 100 shares of the same kind of stock. These shares were neither acquired nor held on behalf of any particular stockholders.